LAWRENCE E. WILLMORTH

IBLA 76-780 Decided November 1, 1977

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting appellant's color of title application, OR 12689 (Wash.).

Set aside and hearing ordered.

1. Color or Claim of Title: Good Faith

   A 20-year period of good faith adverse possession immediately prior to the time claimant learned of the defect in his purported title is a requirement of a class 1 color of title claim. Good faith requires an honest belief by claimant that the land was owned by him and the Department may consider whether such belief was unreasonable in the light of the facts then actually known to claimant. Although a period of possession by claimant's predecessors in title may be tacked on to claimant's possession, their good faith must also be established.

2. Color or Claim of Title: Improvements

   Improvements relied upon to establish a class 1 color of title claim must be present on the land at the time the application is filed and must enhance the value of the land.

3. Color or Claim of Title: Generally--Color or Claim of Title: Adverse Possession

   In order to establish the adverse possession required for a class 1 color of title claim, a claimant must establish that he and his

predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years.

4. Color or Claim of Title: Generally--Rules of Practice: Appeals: Hearings

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proven, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

APPEARANCES: Jack Doty, Esq., Chelan, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting appellant's color of title application, OR 12689 (Wash.), for certain land in lots 4 and 5, sec. 9, T. 27 N., R. 23 E., Willamette Meridian, Chelan County, Washington. The application was filed as a class 2 color of title claim. 1/ The BLM correctly found the application to be defective on its face as a class 2 claim because there was no allegation of adverse possession and payment of taxes by appellant and his predecessors in title since prior to January 1, 1901, as required by statute. 43 U.S.C. § 1068 (1970); Bryan N. Johnson, 15 IBLA 19, 21 (1974).

The BLM then proceeded to adjudicate the application as a class 1 claim. The decision below rejecting the application was based on a finding that the improvements on the land at the time

1/ Two separate grounds for a color of title application have been established by the Color of Title Act, 43 U.S.C. § 1068 et seq. (1970). Applications filed under the Act are classified by regulation, 43 CFR 2540.0-5(b), as either a class 1 claim or a class 2 claim depending upon which provision of the statute they are filed under. Claims based upon good faith, peaceful, adverse possession for more than 20 years under claim or color of title coupled with installation of valuable improvements or cultivation are referred to as class 1 claims. On the other hand, claims founded upon good faith, peaceful, adverse possession under claim or color of title for the period commencing not later than January 1, 1901, to the date the application is filed, during which period claimant and/or his predecessors in title have paid all taxes levied on the land by state and local governmental units, are referred to as class 2 claims.

of the application did not constitute "valuable improvements" as required by the Color of Title Act, 43 U.S.C. § 1068 et seq. (1970), and further, that appellant's predecessors in title had reason to know of the defective title thus destroying the 20-year period of good faith adverse possession required by the Act.

In his statement of reasons for appeal, appellant disputes the monetary value of the improvements on the land set by the BLM. Further, appellant denies that he or his predecessors in interest had notice of a defect in title. In addition, appellant alleges that he is entitled to notice and a hearing prior to adverse action on his application as a matter of due process.

The holding of the BLM regarding the lack of valuable improvements was based on a field investigation disclosing the following improvements:

> (1) Several old roads, of which many are unusable; (2) a livestock control fence in need of repair; and (3) a spring development which is presently usable only for livestock purposes. In addition, no part of the land has been reduced to cultivation, and there is no record of a legal water right as claimed by the applicant.

The BLM further found that: "It is estimated that the initial cost of placing the existing improvements on the land is between $900.00 and $1,100.00; therefore, such improvements are not considered valuable as required in a claim of class 1."

The BLM cited several grounds for its finding of lack of good faith. First, the loss of a sale in 1964 of lot 3 of section 9 by appellant's predecessor in title, Mr. Wooten, as a result of a title report indicating lot 3 had not been patented and thus title thereto was in the United States. Immediately thereafter, Mr. Wooten stopped paying taxes on lots 4 and 5 as well as lot 3. Secondly, a proviso in a title insurance policy issued in connection with the sale in 1960 of an easement across lots 4 and 5 by appellant's predecessor, Mr. Wooten, indicating that the lots are unpatented land. Further, the BLM noted that the deed executed on November 4, 1958, by which Norman and Ruth Gallagher conveyed lots 4 and 5, along with other land, to Mr. Wooten, limited warranty of title to that provided in the contract of sale dated July 3, 1958. According to the BLM decision, said warranty specifically excluded lots 4 and 5. Finally, the BLM decision noted that the deed conveying lots 4 and 5 from Grace D. Lewis to Norman and Ruth Gallagher, predecessors in title of appellant, executed on February 12, 1958, specifically excluded from warranty of title Government lots 4 and 5 "insofar as an unrecorded patent from the United States is concerned."

Counsel for appellant raises several issues of material fact in the statement of reasons for appeal. An estimate of the value of the improvements on the property in the amount of $4,843 is submitted to support an allegation of error in the valuation made by the BLM. Further, appellant alleges that the improvements were incomplete and in a state of disrepair because the BLM had kept appellant off the land after the BLM first asserted title. Finally, it is asserted that neither the appellant nor his predecessors in interest knew that title was actually in the United States. Counsel points out that the deed to lot 3 cited by the BLM is not in appellant's chain of title. It is also alleged that the title policy relied upon by the BLM was never seen or heard of by anyone in appellant's chain of title. Counsel also contends the lack of warranty of title does not imply a title defect or knowledge of a defect.

[1] An essential element of a color of title claim is the good faith requirement. 43 U.S.C. § 1068 (1970). Good faith in adverse possession requires that a claimant honestly believe the land is owned by him. See 43 CFR 2540.0-5(b). In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in the light of the facts then actually known to him. Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), rev'd on other grounds, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). Claimants must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time claimant learned of the defect in his purported title to meet the good faith requirement for a class 1 color of title claim. Claimant may tack on to his own possession a period when the land was possessed by his predecessors in title, but if this is done, their good faith must also be established. See Mable M. Farlow, 30 IBLA 320, 330 (1977).

The facts cited by the decision of the BLM, when viewed against the factual allegations made by appellant in the statement of reasons for appeal give rise to an issue of material fact regarding the good faith of appellant and his predecessors in title. We believe that this factual issue can best be resolved by providing an opportunity for a hearing where pertinent testimony and documentary evidence may be introduced and where witnesses may be cross-examined. Facts to be considered at such a hearing may include all those relevant to the good faith of appellant and his predecessors in title.

[2] Improvements relied upon to establish a class 1 color of title claim (where there has been no cultivation) must be present on the land at the time the application is filed and must enhance the value of the land. Lena A. Warner, 11 IBLA 102, 106 (1973); Virgil H. Menefee, A-30620 (November 23, 1966).

[3] Finally, a claimant under the Color of Title Act must establish the elements of adverse possession. This requires a showing that claimant and his predecessors in title were in actual, exclusive, continuous, open and notorious possession of the land. Beaver v. United States, 350 F.2d 4, 9-10 (9th Cir. 1965), cert. denied, 383 U.S. 937; Harold C. Rosenbaum, 5 IBLA 76, 82, 79 I.D. 38, 41 (1972); 2 CJS Adverse Possession § 25 (1972). Mere occasional, sporadic, or periodic entries on the land for temporary purposes do not constitute actual possession and are not sufficient to acquire title by adverse possession. 2 CJS Adverse Possession, § 31 (1972).

The facts disclosed in the BLM decision below and the allegations in appellant's statement of reasons for appeal raise a factual issue regarding appellant's improvements and occupancy. We believe this, like the question of good faith, can best be resolved at a hearing.

[4] The obligation of proving a valid color of title claim is on the applicant. Joe I. Sanchez, 32 IBLA 228 (1977); Mable M. Farlow, supra. Where appellant has alleged facts which, if proved, may establish his color of title claim, he should be afforded an opportunity to substantiate his claim at a hearing where testimony as well as documentary evidence may be presented and explained and where the BLM may, if it desires, present its own evidence and cross-examine appellant's witnesses. Joe I. Sanchez, supra; Mable M. Farlow, supra; see Sun Studs, Inc., 27 IBLA 278, 83 I.D. 518 (1976). Therefore, it is ordered that a fact-finding hearing be held before an Administrative Law Judge pursuant to 43 CFR 4.415. The applicant shall have the duty of going forward with the evidence as well as the burden of proof at such hearing.

The issues at the hearing may include all matters relevant to showing entitlement under the Color of Title Act. Among the pertinent issues raised by the decision below, the case record, and appellant's allegations are whether appellant and his predecessors acted in good faith, without knowledge or reason to know that title to the land was defective; whether "valuable improvements" existed on the land at the time of the application; and whether the elements of adverse possession (actual, exclusive, continuous, open, and notorious possession of the land for a 20-year period) have been established.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision appealed from is set aside and the case is referred to the Hearings Division for appropriate action.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge